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6 UNITED STATES DISTRICT COURT  
7 WESTERN DISTRICT OF WASHINGTON  
8 AT SEATTLE

9 UNITED STATES OF AMERICA,

10 Plaintiff,

11 v.

12 REAL PROPERTY COMMONLY KNOWN  
13 AS 2526 155<sup>TH</sup> PLACE SE, BELLEVUE,  
14 WASHINGTON, KING COUNTY PARCEL  
15 #675130-0450, TOGETHER WITH ITS  
16 BUILDINGS, IMPROVEMENTS,  
17 APPURTENANCES, FIXTURES,  
18 ATTACHMENTS, AND EASEMENTS;  
19 REAL PROPERTY COMMONLY KNOWN  
20 AS 31726 NORTH SPOTTED RD, DEER  
21 PARK, WASHINGTON, SPOKANE  
22 COUNTY PARCEL #28092-9065,  
23 TOGETHER WITH ITS BUILDINGS,  
24 IMPROVEMENTS, APPURTENANCES,  
25 FIXTURES, ATTACHMENTS, AND  
26 EASEMENTS; AND REAL PROPERTY  
COMMONLY KNOWN AS 849 NW WALL  
STREET, BEND, OREGON, DESCHUTES  
COUNTY PARCEL #1-061 17 12 32 BD  
06200 103806, TOGETHER WITH ITS  
BUILDINGS, IMPROVEMENTS,  
APPURTENANCES, FIXTURES,  
ATTACHMENTS, AND EASEMENTS,

Defendants.

C07-359Z

ORDER

1       THIS MATTER comes before the Court on the Government's motion to dismiss the  
2 claims of David Mendoza and 849 Wall Street, LLC. Having reviewed all papers filed in  
3 support of and in opposition to the Government's motion, including the claimants'  
4 supplemental memoranda, docket nos. 66 & 67, and the Government's response thereto,  
5 docket no. 68, the Court GRANTS the Government's motion to dismiss, docket no. 38.

6       The background and legal authorities relating to the Government's motion to dismiss  
7 are discussed in the Court's Order dated December 15, 2008, docket no. 64. The  
8 Government brings its motion pursuant to the Civil Asset Forfeiture Reform Act of 2000  
9 ("CAFRA"), specifically 28 U.S.C. § 2466(a), which provides the Court discretion to  
10 "disallow a person from using the resources of the courts of the United States in furtherance  
11 of a claim in any related civil forfeiture action" upon a finding that such person "after notice  
12 or knowledge of the fact that a warrant or process has been issued for his apprehension, in  
13 order to avoid criminal prosecution . . . declines to enter or reenter the United States to  
14 submit to its jurisdiction."

15       In its earlier Order, the Court provided notice to Mr. Mendoza that, unless he was  
16 physically present within this jurisdiction by March 6, 2009, the Court would grant the  
17 Government's motion and dismiss his claims (and 849 Wall Street LLC's claims) concerning  
18 the Bellevue, Deer Park, and Bend Properties. In an effort to point the blame at the  
19 Government for his continued absence from the jurisdiction, Mr. Mendoza has filed yet  
20 another writ from the Second Section of the Criminal Department of the National Audience  
21 of Spain, along with an English translation thereof. Contrary to Mr. Mendoza's  
22 interpretation, however, the writ indicates that the delay in returning Mr. Mendoza to the  
23 United States has been caused by his own insistence that certain conditions attach to his  
24 extradition:

25       The Tribunal is fully aware that the Prosecution and the defense have staked  
26 positions that are strongly contrary with respect to the sufficiency of the  
guarantees contained on the verbal note forwarded by the North American  
diplomatic authorities.

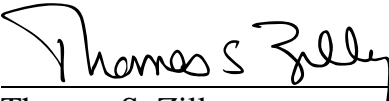
1 For the Prosecution, the pledges are sufficient and this Court should  
2 immediately consider the judicial phase of the extradition closed. Contrary-  
3 wise the defense of the wanted one has stated that the documentation  
4 forwarded deserves total rejection, since it does not afford at a minimum  
5 neither the singularity of the extradition processes, nor the non-imposition of  
life without parole, nor the transfer of the wanted one to Spain to serve a  
sentence in case he were to be convicted of the facts in the extradition request,  
the party at present is requesting the opening of a procedure of incidental issues  
of enforcement.

6 Translation of Writ at 3, Appendix A to Memorandum (docket no. 67 at 10) (emphasis  
7 added). As explained in the Court's previous Order, although Mr. Mendoza is entitled to  
8 pursue enforcement of the Spanish Court's "proviso" that he be permitted to serve his  
9 sentence in Spain, he does so at peril to his claims in this civil forfeiture action. See Order at  
10 9 (docket no. 64) ("if Mr. Mendoza wishes to avoid the effect of the CAFRA, he needs to be  
11 physically present within this jurisdiction by the date set forth above, even if he must forego  
12 all remedies and favorable conditions related to or associated with extradition or the  
13 extradition process"). The Court is satisfied that Mr. Mendoza has had ample notice and  
14 opportunity to be heard, that he remains unwilling to reenter the United States to submit to its  
15 jurisdiction, and that his continued absence from this jurisdiction is the product of his own  
16 actions. Thus, the Government's motion to dismiss is GRANTED.

17 IT IS SO ORDERED.

18 The Clerk is directed to send a copy of this Order to all counsel of record.

19 DATED this 12th day of March, 2009.

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22 Thomas S. Zilly  
23 United States District Judge  
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